



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
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Washington, D.C. 20554

VIA UPS

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Re: In the Matter of Policies and Rules
Concerning Unauthorized Changes of
Consumers' Long Distance Carriers
CC Docket No. 94-129

Dear Secretary Caton:

Enclosed are an original and four (4) copies of the Reply
Comments of the Pennsylvania Public Utility Commission in the
above-captioned docket.

Parties have been served as noted on the attached Certificate
of Service.

Very truly yours,

Maureen A. Scott
Assistant Counsel

cc: Parties on Attached
Certificate of Service

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Policies and Rules Concerning) CC Docket No. 94-129
Unauthorized Changes of)
Consumers' Long Distance)
Carriers) DOCKET FILE COPY ORIGINAL

REPLY COMMENTS OF THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

I. Introduction

The Pennsylvania Public Utility Commission ("PaPUC") submits the following comments in response to the FCC's Notice of Proposed Rulemaking ("NPRM") and the initial comments of other parties filed on January 9, 1995.

The FCC initiated this NPRM because of a dramatic increase in the number of slamming complaints received in Fiscal Year 1994. Since many of these complaints involved misleading Letters of Agency ("LOAs"), the FCC's proposals focus primarily upon changes to the form and content of LOAs. The FCC's proposal would limit the contents of a LOA so that its sole purpose in the future would be to authorize a Primary Interexchange Carrier ("PIC") change. Carriers would no longer be permitted to include inducement or promotional materials in the LOA, a practice which has been abused by some providers leading to significant customer confusion and unauthorized PIC changes. Carriers would be prohibited from attaching any other document, i.e., promotional materials, to the

LOA. The proposed rules would also require carriers to use clear and unambiguous language in the LOA and type that is a sufficient size and readable style to be clearly legible. The proposed rule would prohibit "negative option" LOAs which require customers to take some affirmative action to avoid having their long distance service changed. In addition to these proposals, the FCC seeks comment on a number of other issues relating to the customer's liability to the slamming carrier and carrier branding on the customer bills.

PaPUC strongly supports the many consumer protection measures proposed by the FCC in its NPRM. Complaints at both the state and federal levels indicate that slamming continues to be a significant problem for consumers. PaPUC believes that a major reason behind slamming is the lack of disincentives in existing regulations which would act to discourage carriers from engaging in this practice. Accordingly, no rules that the FCC adopts will be truly effective if they do not incorporate significant penalties for carriers that engage in any form of slamming in the future. The PaPUC's positions on the specific issues raised in the NPRM and on the comments of other parties are discussed in detail below.

II. The FCC's Proposals Are Reasonable and Necessary to Prevent the Unscrupulous Conduct of Some Carriers.

Consistent with the initial comments of many other parties, PaPUC supports the FCC's proposal to require carriers to separate

promotional materials from the LOA in the future.¹ While the PaPUC has been unable to determine the extent of this problem in Pennsylvania, obviously consumer complaints filed at the federal level and in other states indicate a serious problem in this regard. Less scrupulous carriers should not be allowed to continue to take advantage of consumers by intermixing promotional materials with the LOA in such a fashion as to disguise the true purpose of the LOA so that consumers will be deceived or tricked into changing their PIC when this was not their actual intent.

While some interexchange carriers ("IXCs") oppose this requirement as overly broad because it will also interfere with their own legitimate marketing promotions, PaPUC believes that this is an unfortunate but necessary byproduct of consumer protection measures in general. Generally, a few less scrupulous entities spoil it for the majority of providers. Similar problems would likely be encountered with any less drastic measure which the Commission might adopt and would continue to impose an almost impossible administrative and enforcement burden on both the Commission and the industry. Further, rather than act as a preventative measure as would the Commission's proposal, problems would have to await the complaint process before being rectified

¹See, Comments of the Florida Public Service Commission, pp. 1-2; Comments of the California Public Utilities Commission, p.3; Joint Comments of the Missouri Office of Attorney General, The Missouri Public Service Commission and the Missouri Office of the Public Counsel, p. 4; Comments of Pacific Bell and Nevada Bell, p. 2; Comments of the National Association of Attorneys General et al., p. 3; Comments of GTE, p. 5; Comments of LDDS Communications, p. 5.

again. By that time, the damage is already done -- i.e., the customer's PIC has already been converted.²

PaPUC also strongly supports the Commission's proposal to place an outright ban on "negative option LOAs". There would appear to be no legitimate purpose behind any marketing gimmick which requires the customer to take some affirmative action just to maintain the status quo. Rather, if any tactic is designed to trick or deceive the consumer, it is this one. The initial commenters were in almost unanimous agreement on this issue. "Negative option LOAs" should be banned without exception.³

Consistent with the comments of others, PaPUC does not believe that it is necessary for the Commission to prescribe the content of the LOA word for word at this time or that the customer's phone

²The only other reasonable alternative the FCC could make available to carriers would be to require them to label each document and imprint in large bold letters at the top and bottom of each document requiring a customer signature, a warning that the form is an authorization to change the customer's current long distance carrier and that if the customer signs and returns the form, its present long distance will be changed to [new carrier's name]. However, enforcement burdens would be greater with this alternative and some states have experienced problems with this method. See, Comments of the California Public Utilities Commission, p. 2 ("In one investigation, the CPUC discovered that an IXC was sending checks to potential customers containing language about switching the customer's long distance carrier. However, the language on the checks was so faint that critical sections discussing switching carriers were completely illegible.")

³See, Comments of the National Association of Attorneys General et. al. p. 4, Comments of the New York State Department of Public Service, p. 2; MCI Comments, p. 3; Comments of LDDS Communications, p. 5; Comments of AT&T, p. 12.

number be preprinted on the LOA.⁴ The Commission might consider issuing a "safe-harbor" form, however, for use by carriers desiring Commission guidance, but, which would at the same time still allow carriers to depart from its specific wording and to insert other provisions as long as consistent with the letter and spirit of the Commission's rules. Space should be provided on the form for customer confirmation of the PIC numbers to be changed.

All of the Commission's proposals will be in vain, however, if the customer does not realize or understand the true import of the document he or she is signing. Consequently, PaPUC agrees with several other parties that the LOA must be appropriately captioned so that the consumer can readily recognize its significance. The term "Letter of Agency" is inadequate. The FCC should require a bold print caption at the beginning of the document which conveys the following information: "AUTHORIZATION TO CHANGE INTERSTATE LONG DISTANCE PROVIDER". We also agree with the State Attorneys General that a caption above the signature line warning the signatory that only persons authorized to sign the form are allowed to do so would be a useful reminder to the customer and should alleviate some claims of unauthorized conversions.⁵ This should work not only to the customer's advantage, but to the carrier's as well.

Because of the specific abuses referenced in the NPRM, PaPUC supports the Commission's prescription of specific requirements as

⁴Accord, Comments of the New York State Department of Public Service, p. 3; Comments of AT&T, p. 10.

⁵Comments of the National Association of Attorneys General et al., p. 8.

to font and print size and LOA translations into foreign languages. Carriers should not be allowed to omit material provisions from foreign language translations. The translation should be an exact match to the English equivalent which should appear directly below each paragraph of the LOA intended for persons whose primary language is not English. Additionally, carriers should not be allowed to downplay or disguise selected information by manipulating font and print size so that the customer focuses on some forms or materials to the carrier's benefit, or, overlooks smaller size information which the carrier does not want the customer to notice. Manipulation of font and print size in this way would allow carriers to comply with the FCC rules in form, but permit them to effectively evade the requirements in substance.

Font and print requirements are particularly important if the Commission continues to allow carriers to mail the promotional materials and LOA together in the same envelope, which PaPUC believes the Commission should permit at this time⁶ due primarily to underlying cost considerations. However, if problems are identified in the future due to the integrated nature of the mailing, the Commission may desire to reexamine this matter.

The LOA requirements and other presubscription safeguards should apply to both businesses and residences alike.⁷ A review of

⁶Accord, Comments of GTE, p. 5; Joint Comments of the Missouri Office of Attorney General, the Missouri Public Service Commission and the Missouri Office of the Public Counsel, p. 4.

⁷Accord, Comments of the National Association of Attorneys General et al., p. 8; NYNEX Comments, p. 4.

recent slamming complaints in Pennsylvania indicates that both residential and business customers are affected, albeit business customers to a lesser degree. Nonetheless, based upon complaints in Pennsylvania it appears that even the increased sophistication of business customers may no longer be enough to prevent them from also falling prey to some of the more clever marketing tactics now being utilized.

Like many other commenters, PaPUC believes that it would be misleading and confusing for the name of the underlying carrier to appear on the customer's bill.⁸ This would give the wrong impression to the subscriber that he or she had in fact subscribed to the underlying carrier's service at the underlying carrier's rates, when this is not the case. The name of the carrier with whom the subscriber contracted and whose rates will apply should appear on the bill.⁹ The Commission should also allow the names of billing clearinghouses to appear on the bill when they possess the authority and information to resolve customer billing inquiries or complaints, as long as all entities appearing on the bill are clearly identified.

III. Slamming will not Subside Until The Commission Builds Appropriate Disincentives Into Its Regulations Which Make The Practice Financially Unattractive.

PaPUC agrees with those parties who suggested that the

⁸Comments of the New York State Department of Public Service, p. 4, NYNEX Comments, p. 3; MCI Comments, p. 17; Comments of LDDS Communications, Inc., p. 4.

⁹Accord, Comments of AT&T, p. 16.

Commission's proposed regulations do not go far enough.¹⁰ By focusing primarily on the LOA, the Commission has ignored other prevalent forms of slamming which also need to be remedied.

The Commission, however, can reach and rectify all forms of slamming by making it financially unattractive for carriers to engage in any form of slamming in the future. In its NPRM, one of the issues that the FCC sought comment on was the degree of customer liability for charges assessed by the slamming carrier. Current FCC rules relieve the customer of responsibility for paying any switching fees to the LEC in instances of unauthorized PIC conversion. PaPUC agrees with some commenters that at a minimum, the customer should also be forgiven for those MTS charges exceeding what he or she would have been charged by his or her PIC had conversion not occurred.¹¹

However, a rule of this nature would require the slamming carrier to make computations as to the amount of the credit the victimized customer is entitled to, and would put far too much trust in the offending carrier which has already shown itself more than willing to violate Commission rules and the customer's confidence. The slamming carrier could easily manipulate these calculations to its benefit, and would probably do so. This would result in further customer dissatisfaction and complaints. Also, requiring the customer to submit a "detailed written claim" as LDDS proposes would inappropriately place the burden for compensation on

¹⁰Comments of GTE, p. 2; NYNEX Comments, p. 3.

¹¹Comments of GTE, p. 2.

the victimized party.¹² On the other hand, relieving the customer of all responsibility to pay the offending carrier, while providing the maximum incentive to carriers not to engage in slamming, may encourage false claims of slamming by consumers hoping to avoid long distance charges for the LEC billing cycle involved.

Consequently, PaPUC agrees with those parties who advocate that the FCC impose a penalty on offending carriers.¹³ PaPUC believes that the best option would be for the Commission to institute a penalty of 50% of billed rates, with 25% going to the customer as a credit on his or her bill and the other 25% deposited into an industry fund to be used for customer education purposes or industry sponsored studies aimed at reducing the occurrence of slamming or other forms of telecommunications consumer fraud. PaPUC believes that a penalty in the range of 50% would provide a sufficient disincentive to carriers which currently engage in this practice; while splitting the penalty between the customer and an industry fund would appropriately balance the interests of the respective parties.

With respect to the issue of optional calling plans ("OCPs"),

¹²See, Comments of LDDS Communications, p. 7.

¹³See, Comments of the California Public Utilities Commission, pp. 3-4; Comments of AT&T, p. 21 ("To compensate the consumer, while keeping the administrative burdens to a minimum, AT&T suggests that slammed customers should be required to pay the slamming IXC its basic long distance rates, less a fixed percentage specified by the Commission to approximate the rate differential from the customers' designated IXC. AT&T submits that a credit of 20 percent for domestic calls and 40 percent for international calls should adequately compensate consumers and appropriately penalize the slamming IXC.")

consumers should not be liable to their original PIC for OCP charges once the PIC has been changed and the customer has been presubscribed to another carrier.¹⁴

Finally, should the serious violations discussed above continue unabated, we would endorse the suggestion of the National Association of State Attorneys General for the Commission to reexamine the need for a rule which would require all change orders to be followed by written confirmation.¹⁵

IV. The Use of 800 Numbers for Solicitation Should Be Permitted As Long As the Commission's Verification Procedures Apply.

The Commission rules should continue to permit the use of 800 numbers for solicitation purposes as long as the verification procedures set forth in the Commission's rules at 47 C.F.R. Section 64.1100 apply.¹⁶ PaPUC agrees with other commenters that if the subscriber makes a decision to change PICs on an 800 call initiated by the customer, the customer should be permitted to complete the transaction at that time. However, the Commission's verification rules must apply to any telephonic PIC change including those obtained on calls initiated by the customer for informational purposes.

V. Preemption Would Be Illegal and Inappropriate.

Some parties argue that the Commission should preempt state

¹⁴Accord, Comments of AT&T, p. 18.

¹⁵Comments of the National Association of Attorneys General et al. p. 11.

¹⁶Accord, Comments of the New York State Department of Public Service, p. 6.

requirements or safeguards pertaining to unauthorized PIC conversions.¹⁷ The Commission should take note that these arguments are not based upon any existing state requirements which negate federal objectives or laws but upon the "potential" for "future" state requirements to negate federal objectives. Current case law does not sanction this form of "anticipatory" preemption and neither should the Commission.

VI. Conclusion

PaPUC applauds the FCC for proposing many important consumer protection measures in this NPRM designed to curtail unauthorized PIC conversions through the use of LOAs. The FCC should also incorporate adequate disincentives into its rules to make it financially undesirable for carriers to engage in this and other forms of slamming in the future. The FCC can most effectively do this by instituting stiff penalties for carriers which engage in this practice in the future and by taking such other actions as are consistent with the comments herein.

¹⁷See, Comments of the Competitive Telecommunications Association, pp. 10-13; Comments of ACC Corporation on Notice of Proposed Rulemaking, pp. 7-8.

Respectfully submitted,

A handwritten signature in black ink, reading "Maureen A. Scott". The signature is written in a cursive style with a horizontal line underneath it.

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Dated: February 7, 1995.

CERTIFICATE OF SERVICE

I, Maureen A. Scott, do hereby certify that on this 8th day of February, 1995, a copy of the Reply Comments of the Pennsylvania Public Utility Commission was served by first class mail, postage pre-paid, upon the parties listed below.

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